



**DEPARTMENT OF HOMELAND SECURITY**

**8 CFR Part 208**

**[CIS No. 2720-22; DHS Docket No. USCIS-2023-0003]**

**RIN 1615-AC84**

**DEPARTMENT OF JUSTICE**

**Executive Office for Immigration Review**

**8 CFR Parts 1003 and 1240**

**[EOIR No. 23-0010; AG Order No. 5632-2023]**

**RIN 1125-AB29**

**Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries; Correction**

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security; Executive Office for Immigration Review, Department of Justice.

**ACTION:** Final rule; correction and correcting amendment.

**SUMMARY:** The Department of Justice (“DOJ”) and the Department of Homeland Security (“DHS”) (“collectively, “the Departments”) are correcting inadvertent errors and omissions in the preamble and the amendatory language of the final rule titled “Implementation of the 2022 Additional Protocol to the 2002 U.S.-Canada Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries” published in the *Federal Register* on March 28, 2023.

**DATES:** This correction is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and is applicable beginning at 12:01 a.m. on Saturday, March 25, 2023.

**FOR FURTHER INFORMATION CONTACT:** For U.S. Citizenship and Immigration Services: Rená Cutlip-Mason, Chief, Division of Humanitarian Affairs, Office of Policy and

Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588-0009; telephone (240) 721-3000 (not a toll-free call).

For Executive Office of Immigration Review: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 1800, Falls Church, VA 22041; telephone (703) 305-0289 (not a toll-free call).

## **SUPPLEMENTARY INFORMATION:**

### **Need for Correction**

On March 28, 2023, the Departments published a final rule in the *Federal Register* at 88 FR 18227 to implement the Additional Protocol to the Agreement between The Government of the United States of America and The Government of Canada For Cooperation in the Examination of Refugee Status Claims From Nationals of Third Countries (“Additional Protocol of 2022”) negotiated by the Governments of the United States and Canada, and signed in Ottawa, Ontario, Canada, on March 29, 2022, and in Washington, DC, United States, on April 15, 2022, respectively.<sup>1</sup> The Additional Protocol of 2022 supplements certain terms of the December 5, 2002 Agreement between The Government of the United States and The Government of Canada For Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries (“Safe Third Country Agreement,” “STCA”).<sup>2</sup> This document corrects inadvertent errors and omissions in the final rule published on March 28, 2023 .

In the final rule, DHS amended 8 CFR 208.30(e)(7) to clarify that the STCA includes the Additional Protocol of 2022.<sup>3</sup> The regulations at 8 CFR 208.30(e)(7) consists of paragraph (e)(7) introductory text paragraphs (e)(7)(i) through (iv). DHS intended to revise only the introductory

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<sup>1</sup> See 88 FR 18227.

<sup>2</sup> See *id.*

<sup>3</sup> See 88 FR 18227 at 18232–33, 18234–35.

text of paragraph (e)(7) of 8 CFR 208.30 and to leave paragraphs (e)(7)(i) through (iv) intact. However, through its instructions, DHS inadvertently removed paragraphs (e)(7)(i) through (iv) of §208.30. This document corrects this error and the amendatory language to ensure that these paragraphs remain in the Code of Federal Regulations (“CFR”). DHS makes no additional changes to 8 CFR 208.30(e)(7) with this correction.

Additionally, in the final rule, DOJ amended 8 CFR 1003.42(h). DOJ revised paragraphs (h)(1) and (2) by making conforming amendments, including amendments to clarify that any determination under the STCA includes the Additional Protocol of 2022.<sup>4</sup> The regulatory text also indicated a change in the heading of paragraph (h)—*i.e.*, changing “*Asylum cooperative agreement—*” to “*Safe Third Country Agreement—*”.<sup>5</sup> That change was inadvertent, as reflected by the fact that DOJ omitted any reference to changing the paragraph (h) heading in the associated amendatory text.<sup>6</sup> Further, because DOJ did not include a change to the paragraph (h) heading in the amendatory text, the current text of the CFR retains the original wording—*i.e.*, “*Asylum Cooperative Agreement—*”. Because the current CFR text uses the correct heading, DOJ is not altering the paragraph (h) heading with this document. DOJ now clarifies, however, that no change in the paragraph (h) heading was intended by the publication of the rule at 88 FR 18227 or the inadvertent use of the phrase “*Safe Third Country Agreement—*” at 88 FR 18240.

Finally, the Departments are correcting the omission of a reference to the CFR in a citation in the preamble at 88 FR 18232 n.43.

## **Corrections**

### *Preamble Correction*

In FR Doc. 2023-06351, appearing on page 18227 in the March 28, 2023, issue of the *Federal Register*, the following correction is made:

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<sup>4</sup> See 88 FR at 18233 and 18235.

<sup>5</sup> See 88 FR at 18240.

<sup>6</sup> See *id.*

1. On page 18232, in the third column in footnote 43, revise the last sentence (the citation sentence) to read as follows: “*See* 8 CFR 1240.11(h)(1) (revised).”

*CFR Correction*

**List of Subjects in 8 CFR Part 208**

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Department of Homeland Security amends 8 CFR part 208 with the following correcting amendment:

**PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL**

1. The authority citation for part 208 continues to read as follows:

**Authority:** [8 U.S.C. 1101](#), [1103](#), [1158](#), [1226](#), [1252](#), [1282](#); Title VII of Pub. L. 110–229; [8 CFR part 2](#); Pub. L. 115–218.

2. In § 208.30, add paragraphs (e)(7)(i) through (iv) to read as follows:

**§ 208.30 Credible fear determinations involving stowaways and applicants for admission found inadmissible pursuant to section 212(a)(6)(C) or 212(a)(7) of the Act.**

\* \* \* \* \*

(e) \* \* \*

(7) \* \* \*

(i)(A) If the asylum officer, with concurrence from a supervisory asylum officer, determines during the threshold screening interview that an alien does not qualify for an exception under the applicable agreement, and, if applicable, that the alien has not demonstrated that it is more likely than not that he or she would be persecuted on account of a protected ground or tortured in the receiving country, the alien is ineligible to apply for asylum in the United States. Subject to paragraph (e)(7)(i)(B) of this section, after the asylum officer's documented finding is reviewed by a supervisory asylum officer, the alien shall be advised that he or she will be removed to the receiving country, as appropriate under the applicable

agreement, in order to pursue his or her claims relating to a fear of persecution or torture under the law of the receiving country. Prior to removal to a receiving country under an agreement authorized by section 208(a)(2)(A), the alien shall be informed that, in the receiving country, the alien will have an opportunity to pursue the alien's claim for asylum or equivalent temporary protection.

(B) Aliens found ineligible to apply for asylum under this paragraph (e)(7) shall be removed to the receiving country, depending on the applicable agreement, unless the alien voluntarily withdraws his or her request for asylum.

(ii) If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of the applicable agreement, or would more likely than not be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or tortured, in the receiving country, the asylum officer shall make a written notation to that effect, and may then proceed to determine whether any other agreement is applicable to the alien under the procedures set forth in this paragraph (e)(7). If the alien establishes by a preponderance of the evidence that he or she qualifies for an exception under the terms of each of the applicable agreements, or would more likely than not be persecuted on account of his or her race, religion, nationality, membership in a particular social group, or tortured, in each of the prospective receiving countries, the asylum officer shall make a written notation to that effect, and then proceed immediately to a determination concerning whether the alien has a credible fear of persecution, reasonable possibility of persecution, or a reasonable possibility of torture, under paragraph (d) of this section.

(iii) An exception to an applicable agreement is defined under the terms of the agreement itself. Each agreement, including any exceptions, will be announced in a *Federal Register* document. If the asylum officer determines that an alien is within one of the classes covered by a section 208(a)(2)(A) agreement, the officer shall next determine whether the alien meets any of the applicable agreement's exceptions. Regardless of whether the text of the applicable

agreement provides for the following exceptions, all such agreements, by operation of section 208(a)(2)(A) of the Act, and as applicable to the United States, are deemed to contain the following provisions:

(A) No alien may be removed, pursuant to an agreement authorized by section 208(a)(2)(A), to the alien's country of nationality, or, if the alien has no nationality, to the alien's country of last habitual residence; and

(B) No alien may be removed, pursuant to an agreement authorized by section 208(a)(2)(A), where the Director of USCIS, or the Director's designee, determines, in the exercise of unreviewable discretion, that it is in the public interest for the alien to receive asylum in the United States, and that the alien therefore may apply for asylum, withholding of removal, or protection under the Convention Against Torture, in the United States.

(iv) If the asylum officer determines the alien meets an exception under the applicable agreement, or would more likely than not be persecuted on account of a protected ground or tortured in the prospective receiving country, the officer may consider whether the alien is subject to another agreement and its exceptions or would more likely than not be persecuted on account of a protected ground or tortured in another receiving country. If another section 208(a)(2)(A) agreement may not be applied to the alien, the officer should immediately proceed to a credible fear interview.

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Christina E. McDonald,  
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Affairs,  
U.S. Department of Homeland Security

**Dated:** April 11, 2023.

Rosemary Hart,  
Special Counsel  
U.S. Department of Justice